

SOLID WASTE UTILITY REGULATION

Solid waste utility regulation began in New Jersey when the Legislature enacted the Solid Waste Utility Control Act (Utility Act) which took effect in 1970. The Utility Act was adopted in response to a State of New Jersey Commission of Investigation (SCI) report published in 1969 that detailed the influence organized crime held on the New Jersey solid waste collection industry. The Board of Public Utilities (BPU) was given the responsibility of regulating the economic aspects of solid waste collection and disposal. In determining whether a proposed increase or decrease in rates was justified and reasonable, the BPU could consider the safety and adequacy of service rendered. The BPU required that each utility maintain a uniform system of accounts, furnish a detailed report of finances and operations on an annual basis and have an approved uniform tariff of its rates and services.

In 1989 the SCI released a second report concerning the solid waste industry in New Jersey. This report was highly critical of continued rate regulation of solid waste collection utilities. The SCI found that traditional rate regulation of solid waste collectors had no impact on corruption in the industry. Moreover, the SCI contended that deregulation of the solid waste collector rate aspect of the industry would serve to protect consumers by creating a more competitive marketplace. Persons with criminal backgrounds would continue to be excluded from the solid waste industry by way of the A-901 Disclosure Law (N.J.S.A. 13:1E-126 et seq.) wherein known criminals or associates are precluded or removed from participation in the industry. The responsibility for the economic regulation of solid waste was transferred to the Department of Environmental Protection (Department) under Reorganization Plan No. 002-1991, section 6, effective August 19, 1991. In response to the 1989 report, the Legislature enacted the Solid Waste Collection Regulatory Reform Act (Reform Act) on April 14, 1992. The Reform Act established a four-year transition period during which time the Department phased out its rate setting authority over solid waste collectors. Solid waste collection companies remained public utilities but were no longer required to petition the Department for authority to raise or lower their rates. Solid waste disposal utilities remained under traditional rate regulation.

On June 3, 1996, new solid waste utility regulations were adopted in response to the Reform Act. In regard to solid waste collectors, the Department no longer had authority to set collection rates. The new focus for the Department would be monitoring the collector industry to insure that the rates which collectors charged were rates that resulted from effective competition in the marketplace. Criteria for evaluating effective competition in the marketplace included, but was not limited to, the following:

1. Existence of barriers to entry into the solid waste collection industry;
2. Intensity of competition in the industry within each service area;
3. Concentration of ownership in the industry within each service area;
4. Observable patterns of anti-competitive behavior; and
5. Availability of substitute services within the service area.

The Department retained the authority to adjust a collector's rate when it could be shown that the rate charged by a particular collector was a rate that did not result from effective competition.

A significant result of the deregulation of rates was a major consolidation within the collection industry in New Jersey. Major national solid waste companies began to purchase almost all of the large and medium sized independently owned and operated solid waste companies. Waste Management, Inc., Republic Services of New Jersey, Inc., Allied Waste Industries, Inc., and Onyx Waste Services, Inc. purchased most of the large and medium size collection companies in the State. Appendix table G-1 demonstrates the consolidation that occurred in the collection industry. Of the top fifty collection companies in 1995, based on gross operating revenue, only six were not acquired by one of the four major companies by 2002. During calendar year 2001, the four major collection companies in New Jersey accounted for 57% of all the gross operating revenue reported by the collection industry. (See pie chart). Although the gross operating revenue in the industry is becoming more concentrated in the four major collection companies, the number of collectors in the entire marketplace has risen to 610 in 2002, up from 462 in 1993 and 431 in 2000. Most of the new collection companies entering the industry are small, one or two truck operations that focus on commercial customers.

The Reform Act also required the Department to establish bid specifications for municipalities that contract with private solid waste collection companies to provide service to their municipality. In fact, the 1969 SCI report was most critical of the limited number of collectors that bid on municipal contracts, and concluded that bid rigging and collusion were common practices in this area of the industry. New regulations were adopted that went into great detail regarding how a municipality could advertise for solid waste collection services. The purpose of the specifications was to prevent arbitrary requirements in the bid document or the contract. For example, a municipality could no longer require that a bond be posted for the entire length of the contract period. Instead a bond was required to be secured on an annual basis during each year of the contract. This would allow smaller companies that could not afford a bond for the entire length of a contract, to bid on municipal collection contracts. Once a municipal solid waste collection contract was awarded, the collection company must file a copy of the contract with the Department. The municipality is then responsible for filing a Department form, which summarizes the contract. The Bureau of Solid Waste Regulation has entered this municipal solid waste collection contract data into a database and the information is available on the Bureau's web page, www.state.nj.us/dep/dshw/swr. Municipal purchasing officials may access the information and determine what similar municipalities are paying for their collection services.

Solid waste disposal utilities have remained subject to traditional rate control. One major change to the way the Department economically regulates solid waste disposal utilities was to create a peak rate in response to the Atlantic Coast case, where solid waste flow control was deemed unconstitutional because it discriminated against out-of-state facilities. The peak rate was defined as a disposal utility's approved rate at the time flow control was found to be unconstitutional (November 1997). With the loss of flow control,

facilities initially were required to compete for various solid waste throughout the entire state. By establishing a peak rate, a facility could lower or raise its rates without Department approval as long as it didn't exceed the facilities approved rate on November 10, 1997. Facilities were given the flexibility to respond to market forces without waiting for Department approval. The concept of a peak rate has worked well for the disposal utilities and very few facilities have petitioned the Department for authority to raise their rates. Facilities that had very little or no debt, such as New Jersey Meadowlands Commission (formerly the Hackensack Meadowlands Development Commission) and Burlington County Landfill, have sought Department approval to raise rates because their rates were very low before waste flow was found to be unconstitutional. Overall, rates among solid waste disposal utilities have remained below their peak rates or experienced very minimal increases.